

2-24-2017

## Affidavit of R. Hart (2nd)

E. Richard Hart

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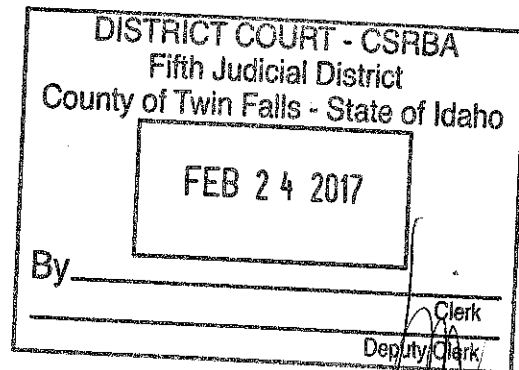
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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

In re CSRBA

Case No. 49576

3 ) Subcase Nos.: 91-7755 (and consolidated  
) subcases)  
)  
) SECOND AFFIDAVIT OF E. RICHARD  
) HART  
)  
)

State of Washington )  
) ss.  
County of Shoshone )

COMES NOW, E. Richard Hart, after being duly sworn before an officer authorized to administer oaths, swears and declares as follows:

(12) My name is E. Richard Hart. I am a professional historian. I am over the age of 18 and am competent to testify to matters herein. I have personal knowledge of the matters contained herein. I have submitted a previous affidavit in this case and continue the numbering in this affidavit consecutive to the numbering in my first affidavit to avoid any confusion.

SECOND AFFIDAVIT  
OF RICHARD HART - 1

(13) Subsequent to submitting my prior affidavit the State of Idaho, and other parties, have filed motions for summary judgment along with supporting memoranda, affidavits, and exhibits. I have reviewed the summary judgment filings of the State of Idaho, the North Idaho Water Rights Alliance, and Hecla, Ltd.

(14) The summary judgment filings of the State of Idaho, the North Idaho Water Rights Alliance, and Hecla, Ltd. contain factual allegations and averments which, in my opinion, are erroneous and misleading from a historical perspective.

(15) I have prepared the following documents which contain my opinions in relation to the erroneous and misleading factual allegations and averments noted in the paragraph above.

(16) Attached hereto as Exhibit "1" is a true, accurate, and correct copy of the first page, and pages 3 to 13 and 51 to 59 of the rebuttal report entitled, "A Reply to the Report of Dr. Stephen Wee," which I prepared in this case.

(17) Attached hereto as Exhibit "2" is a true, accurate, and correct copy of a document I prepared and which is entitled, "A Short History of Hydroelectric Power."

(18) Attached hereto as Exhibit "3" is a true, accurate, and correct copy of a document I prepared and which is entitled, "The Purported Frederick Post Agreement."

(19) My opinions expressed in Exhibits "1" through "3" above are held to a reasonable degree of certainty in my respective field of expertise.

(20) Attached hereto as Exhibit "4" is a true, accurate, and correct copy of Exhibit 649 to the report I submitted in the litigation known and cited to in the Tribe's briefing as *Idaho II*.

(21) Attached hereto as Exhibit "5" is a true, accurate, and correct copy of Exhibit 300 of the report I submitted in the litigation known and cited to in the Tribe's briefing as *Idaho II*.

(22) It is my understanding that the foregoing exhibits 4 and 5 were duly admitted as evidence before the trial court in *Idaho II*. As a historian, I attest that the exhibits referenced are records, reports, and/ or statements of a public office and agency setting forth its regularly conducted and recorded activity. Further as documents affecting an interest in property, I obtained a copy of the exhibit from the public office authorized by statute to hold such document. The original of said exhibit has been in existence for more than thirty (30) years.

Further you affiant sayeth naught.

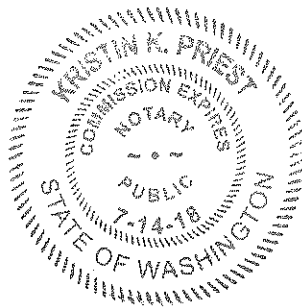
Respectfully submitted this 21<sup>st</sup> day of February, 2017.

E. Richard Hart  
E. Richard Hart

#### NOTARIAL ATTESTATION

That on the 21<sup>st</sup> day of February, 2017, and after being duly sworn, Richard Hart, personally known to me and/or upon showing sufficient identification, appeared before me attested to and executed this document.

(SEAL)



Kristin K Priest  
Print: Kristin K Priest, Notary Public  
Residing at: Winthrop, WA

My commission expires: 07/14/2018

### Certificate of Service

I hereby certify that on the 22<sup>nd</sup> day of February, 2017, I caused to be served a true and correct copy of the foregoing document upon the following individuals via email and/or by placing the document in the United States Mail, postage prepaid, addressed as follows:

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By: Marcella J. Harrison

# EXHIBIT 1

**A Reply  
to the Report of Dr. Stephen Wee**

by  
E. Richard Hart

May 20, 2016

## II. Coeur d'Alene Subsistence, 1780-1873

At the time of first contact with non-Indians from the Europe, and throughout the period from that time until the Coeur d'Alene Reservation was established in 1873, the Tribe was dependent on fishing, hunting, gathering and digging roots for subsistence. Although they also relied on hunting for deer and other animals in their own region, and engaged in an annual buffalo hunt to the east, without their provident supply of fish, they could not have survived. The water in their territory was necessary for all of their subsistence activities.

Between 1780 and 1873 (the date of the establishment of the Coeur d'Alene Reservation), the Tribe depended on the water in the heart of its aboriginal territory for all of its subsistence activities: hunting, fishing, gathering of plants and digging of roots. During that period, there is not evidence to suggest much, if any change at all, in the subsistence requirements and practices of the Coeur d'Alene Tribe.

In determining subsistence practices of the Tribe, first-hand evidence must be given a high priority. In my initial report, I provided considerable first-hand evidence of Coeur d'Alene subsistence practices during the period.<sup>3</sup> There is documentary evidence providing first-hand observations of Coeur d'Alene subsistence practices up to the point when their 1873 reservation was established.

In 1806 Lewis and Clark were, evidently, the first Europeans to encounter Coeur d'Alene. In the text of their journals and on their map they identified the Tribe with Coeur d'Alene Lake.<sup>4</sup>

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<sup>3</sup>Hart, E. Richard. "A History of Coeur d'Alene Tribal Water Use: 1780-1915," November 25, 2015, especially pages 5-44.

<sup>4</sup>Biddle, Nicholas (ed.). *The Journals of the Expedition Under the Command of Cpts. Lewis and Clark*. New York: The Heritage Press, 1962, Vol. I, end map; Vol. II, p. 450. [14]



The first written record from a fur trader/trapper in contact with the Tribe was from David Thompson, who encountered tribal members in 1809 and who reported, “they made us an acceptable present of dried Salmon and other Fish, with Berries, and the meat of an Antelope.”<sup>5</sup>

Three years later, 1812, trapper Ross Cox described his meeting with the Coeur d’Alene, saying:

Their country is tolerably well stocked with beaver, deer, wild-fowl, &c.; and its vegetable productions are similar to those of Spokane. Some of this Tribe occasionally visited our fort at the latter place with furs to barter, and we made a few excursions to their lands. We found them uniformly honest in their traffic; but they did not evince the same warmth of friendship for us as the Spokans, and expressed no desire for the establishment of a trading post among them. They are in many respects more savage than their neighbours.<sup>6</sup>

Cox, like others, noted the evident Coeur d’Alene defense and protection of their territory.

Jesuit Missionaries of the Roman Catholic Church first arrived among the Coeur d’Alene in the 1840s and priests have remained among them to the present day. The paintings and drawings of Father Nicolas Point provide first-hand representations of Coeur d’Alene use of tribal waters for hunting and fishing.<sup>7</sup> In his textual records, Point, who arrived among the Coeur d’Alene in 1842, also noted that the country had plentiful game, birds and fish, and that the people hunted, fished and gathered roots, traveling by foot or by bark canoes. In his description of their villages, Point said roots were stored in their lodges and that skins of animals

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<sup>5</sup>Glover, Richard (ed.). *David Thompson’s Narrative, 1784-1812*. Toronto: The Champlain Society, 1962, p. 296. [73]

<sup>6</sup>Cox, Ross. *Adventures on the Columbia*. Portland, Oregon: Binfords & Mort Publishers, n.d., p. 262. [46]

<sup>7</sup>Hart, E. Richard. “A History of Coeur d’Alene Tribal Water Use: 1780-1915,” November 25, 2015, Figures 19-25, (pp. 55-64).

hung from poles, and "fish were being smoked over a fire."<sup>8</sup>

Point traveled around Coeur d'Alene Lake to find the place he thought would be the best location for his planned mission. He described Chief Stellam's village at the head of the Spokane River on Coeur d'Alene Lake, where he said the "waters are teeming with fish which are caught, until January, by means of a trellised barrier extending from shore to shore." The following spring, however, he began construction on the first mission church on the banks of the St. Joe River at Chief Gabriel's village site.<sup>9</sup> This location was also a favorite fishing spot for the Coeur d'Alene and fishing weirs were observed in use at that location well into the 20<sup>th</sup> century.<sup>10</sup> In a section he wrote describing his time with the Coeur d'Alene between November, 1842 and February, 1843, Father Point provided a detailed account of tribal fishing. He said, in part:

The Coeur d'Alenes also have their great hunt, but their country, dotted with lakes and interlaced with rivers, abounds in fish no less than in game animals, so they also have their great fishing expeditions. Fishing, like hunting, is done almost the year round. But the great fishing expedition takes place in fall, and the great hunting expedition occurs in the winter.<sup>11</sup>

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<sup>8</sup>Point, Nicolas. *Wilderness Kingdom: Indian Life in the Rocky Mountains, 1840-1847. The Journals and Paintings of Nicolas Point, S. J.* Edited and translated by Joseph P. Donnelly. New York: Holt, Rinehart and Winston, 1967, pp. 12, 14, and 47-50. [137]

<sup>9</sup>Point, Nicolas. *Wilderness Kingdom: Indian Life in the Rocky Mountains, 1840-1847. The Journals and Paintings of Nicolas Point, S. J.* Edited and translated by Joseph P. Donnelly. New York: Holt, Rinehart and Winston, 1967, pp. 50, 58-62, and 67. [137]

De Luca-Waide, Delores. *Historical Essays of the Harrison Area.* Harrison, Idaho: privately printed, n.d., p. 2. [54]

<sup>10</sup>Pentland, Pat Allen. "The Illfated Mission: The Sacred Heart Mission on the St. Joe River, 1842-46," [thesis] presented to Gonzaga History Department, May 1973, p. 42. [699]

<sup>11</sup>Point, Nicolas. *Wilderness Kingdom: Indian Life in the Rocky Mountains, 1840-1847. The Journals and Paintings of Nicolas Point, S. J.* Edited and translated by Joseph P. Donnelly. New York: Holt, Rinehart and Winston, 1967, pp. 174-175. Hunting was described by Point on pp. 178-181. [137]

For the remainder of this quotation see Hart report, pp.63-64.

Father Pierre-Jean De Smet purchased a parcel of land from the Coeur d'Alene in 1846 and had the Mission of the Sacred Heart, as it was called, constructed at this site. De Smet's maps locate the major Coeur d'Alene villages located in the heart of tribal territory on Coeur d'Alene Lake, the Coeur d'Alene River and the St. Joe River.<sup>12</sup>

Father John Joseph Augustine Joset lived among the Coeur d'Alene from 1844 until his death in 1900 at the age of 90. He learned to speak the Tribe's language and was influential with the tribe during that period. He provided an important first-hand description of Coeur d'Alene subsistence practices in 1845. In that document he said the Coeur d'Alene "do not go to seek their food beyond the narrow circle of their valleys." Father Joset said tribal food was obtained by hunting, fishing and gathering. He also described, like Father Point, how the Tribe used their waters as part of their hunting activities.<sup>13</sup>

Governor Isaac I Stevens first reached Coeur d'Alene country in 1853. At that time, he described a recent communal tribal deer hunt in which over four hundred deer were killed. Stevens also described tribal trout fisheries then being used by the Coeur d'Alene.<sup>14</sup>

Father De Smet again described Coeur d'Alene territory in 1859, saying that all the rivers and their tributaries in Coeur d'Alene territory "abound wonderfully in mountain trout and other

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<sup>12</sup>Dozier, Jack. "History of the Coeur d'Alene Indians to 1900." M.A. Thesis, 1961, p. 31. [64]

De Smet, Pierre-Jean. Manuscript maps nos. 13, 27, 28, 34 (sides one and two) and 37, De Smetiana Collection; Jesuit Missouri Province Archives. St. Louis, Missouri. [647]

Peterson, Jacqueline. *Sacred Encounters: Father De Smet and the Indians of the Rocky Mountain West*. Washington State University: Norman, 1993, pp. 118-119 and 122. [135]

<sup>13</sup>De Smet, Father Pierre Jean. "Missions of the Rocky Mountains." *Annals of the Propagation of the Faith* Vol. 7 (1846): pp. 363, 368-369, and 372-375. [55] Emphasis added. For additional material from Joset on hunting and gathering, see Hart, pp. 68-69.

<sup>14</sup>Stevens, Isaac I. *Narrative and Final Report of Explorations for a Route for a Pacific Railroad*, "Reports of Explorations and Surveys, to Ascertain the Most Practicable and Economical Route for a Railroad from the Mississippi River to the Pacific Ocean," Vol. XII, Book I. Washington: Thomas H. Ford, Printer, 1860, pp. 109, 130-135. [168]

fish.” He said much game was found in the forests of the Tribe, including deer, bear and “a variety of fur-bearing animals.”<sup>15</sup>

Captain John Mullan was first in Coeur d’Alene country with Governor Stevens in 1853. Between 1859 and 1862 he led road-building parties that went through the Tribe’s territory. As previously noted, Mullan observed small-scale farming that had begun at the Catholic mission, and said the Tribe “live by hunting, fishing and cultivating the soil.”<sup>16</sup>

In 1865 Father Joseph M. Cataldo, for whom the Coeur d’Alene mission would later be named, came down the Mullan Road to work among the Tribe. He described Coeur d’Alene fishing camps along the Coeur d’Alene River in the 1860s.<sup>17</sup>

First-hand evidence of subsistence practices also comes from the Tribe itself. In the early 1870s as the Tribe negotiated with the United States to reach an agreement on the location of a reservation to form a permanent homeland, the tribe indicated that it wanted a reservation which would include land that could be used for future agricultural cultivation, but in 1872 also said that they still required resources necessary for hunting and fishing.<sup>18</sup> A White surveyor appointed to carry out a survey of the aborted 1867 executive order reservation, also emphasized the Tribe’s reliance on fishing, saying, “Should the fishing be excluded there will in my opinion be trouble with these Indians,” but adding that if the fishing grounds and the mission were to be included in

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<sup>15</sup>De Smet, Pierre-Jean. *New Indian Sketches*. Fairfield, Washington: Ye Galleon Press, 1985 (first published 1863), p. 130. [56]

<sup>16</sup>Mullan, Captain John. *Miners and Travelers’ Guide to Oregon, Washington, Idaho, Montana*. New York: Arno Press, 1973 (originally published 1865), p. 44. [118]

<sup>17</sup>Weibel, Geo. F. *Rev. Joseph M. Cataldo, S.J.: a Short Sketch of a Wonderful Career*. Spokane: Gonzaga Quarterly, March 15, 1928, pp. 6 and 9. [282]

<sup>18</sup>Chiefs of the Coeur d’Alene Nation to [Commissioner of Indian Affairs], November 18, 1872, Letters Received, Washington Superintendency, Microfilm, M 234, Roll 912, RG 75, National Archives. [300]

the Tribe's reservation, "there will be no trouble."<sup>19</sup> Idaho Governor T. W. Bennett concurred in a letter written October 4, 1873, saying that the Tribe demanded that the reservation include the mission and "fishing and mill privileges..."<sup>20</sup>

The Tribe's focus on the use of water for all then current and perceived future subsistence practices can be seen from the provision they included in the 1873 agreement (which led to the 1873 executive order reservation). This provision of the agreement between the United States and the Coeur d'Alene, which could only have come from the Tribe, required

....that the waters running into said reservation shall not be turned from their natural channel where they enter said reservation.<sup>21</sup>

All of the first-hand evidence during the period from 1780 to 1873 shows Coeur d'Alene dependence on fish (including plentiful species of trout, white fish, as well as salmon<sup>22</sup>), game,

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<sup>19</sup>D. P. Thompson to Surveyor General, May 6, 1873, Letters Received, Washington Superintendency, Microfilm, M 234, Roll 912, RG 75, National Archives. [305]

<sup>20</sup>"Governor Bennett's Letter," Idaho Signal, Vol. 1, October 4, 1873 (the governor's letter was dated September 18, 1873). [704]

<sup>21</sup>Shanks to Sec. of the Interior, enclosing agreement with Coeur d'Alene, August 1, 1873, Letters Received, Idaho Superintendency, Microfilm, M 234, Roll 341, RG 75, National Archives. [313]

<sup>22</sup>Dr. Wee suggests that the Coeur d'Alene only fished for salmon in what would become off-reservation sites. That is not the case. The Tribe fished for trout, white fish and other species at fishery sites on their rivers and in their lake. See for instance:

Teit, James A. "The Coeur d'Alène." In *Forty-Fifth Annual Report of the Bureau of American Ethnology, 1927-1928*, edited by Franz Boas. Washington, D. C.: Government Printing Office, 1930, e. g. pp. 55 (lake and river fishing) and 106 (lake trout-fishing at night). [171]

Peltier, Jerome. *Manners and Customs of the Coeur D'Alene Indians*. Moscow, Idaho: Peltier Publications, 1975, pp. 37-38 (fish traps on St. Joe River). [133]

Stevens, Gov. Isaac Ingalls. *Journal of Operations of Governor Isaac Ingalls Stevens of Washington Territory in 1855* (Edward J. Kowrach, ed.). Fairfield, Washington: Ye Galleon Press, 1978, pp. 37-38 ("a Mess of Speckled trout" in the Coeur d'Alene River). [167]

De Smet, Pierre-Jean. *New Indian Sketches*. Fairfield, Washington: Ye Galleon Press, 1985 (first published 1863), p. 130. "All the rivers and rivulets in the Coeur-d'Alene country abound wonderfully in mountain trout and other fish." [56]

Diomed, Alexander. *Sketches of Indian Life in the Pacific Northwest*. Fairfield, Washington: Ye Galleon Press, 1978 (originally published 1902), p. 61. The mission was

plants, and roots. The Tribe villages were located in the heart of their homeland, and they used that area to locate villages and for permanent occupation. Seasonal subsistence practices required wider use of the whole aboriginal territory and protection of that territory from outsiders was a high priority of the Tribe. Their somewhat insular attitude toward outsiders was noted by Europeans from the beginning of contact.

With reduction of their aboriginal territory, the Tribe had to put even more dependence on the area left within the 1873 reservation for subsistence, including the necessity to use all the water flowing into the reservation.

The primary evidence relating to Coeur d'Alene subsistence practices during the period 1780 to 1873 is conclusive. Nevertheless, it is instructive to look at what other experts have concluded about Coeur d'Alene subsistence practices. Teit has provided the fullest description of traditional Coeur d'Alene subsistence, especially fishing activities, which I included in my initial report.<sup>23</sup> Other experts reached similar conclusions.<sup>24</sup> Even Chalfant, who testified against the Coeur d'Alene in the Indian Claims Commission, provides consistent evidence on Coeur d'Alene subsistence.<sup>25</sup>

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established next to the Coeur d'Alene River, which was "copiously supplied with mountain trout." [60]

Pentland, Allen. "The Illfated Mission: The Sacred Heart Mission on the St. Joe River, 1842-46," [thesis] presented to Gonzaga History Department, May 1973; Sacred Heart Collection, Box 10; Special Collections, Gonzaga University map (Figure 26 in my initial report) and page 42. [699] Pentland even mapped fish traps used by the Coeur d'Alene where the St. Joe River enters Coeur d'Alene Lake, which existed into the 20<sup>th</sup> century!

<sup>23</sup>Hart, E. Richard. "A History of Coeur d'Alene Tribal Water Use: 1780-1915," November 25, 2015, pp. 21-23.

<sup>24</sup>Hart, E. Richard. "A History of Coeur d'Alene Tribal Water Use: 1780-1915," November 25, 2015, for instances see, on Peltier pp. 2, 6, 16, 18, 24, 29-31, and 35-38; on Hodge, p. 3; on Ray, pp. 4, 10, 18, 31; and on Dozier, pp. 6 and 25.

<sup>25</sup>Hart, E. Richard. "A History of Coeur d'Alene Tribal Water Use: 1780-1915," November 25, 2015, for instance, see, pp. 2, 28, 26-27, and 29-39.

There is no primary evidence at all to suggest that buffalo meat created any change whatsoever in overall Coeur d'Alene subsistence practices. In fact, Father Joset, who lived among the Tribe for over half a century, said, they did not "go to seek their food beyond the narrow circle of their valleys" and described hunting, fishing and gathering in the heart of their aboriginal homeland.<sup>26</sup>

Even though events occurring after the establishment of the 1873 Coeur d'Alene Reservation had significant impacts on their traditional subsistence activities, those activities continued on the new reservation. In 1876 Father Alexander Diomedi was transferred to the Sacred Heart Mission, which he described as being on a hill near the Coeur d'Alene River, which was "copiously supplied with mountain trout." He said the mission was purposefully built in a place where there was a good supply of game and fish, and that other fishing and hunting camps and villages were in use at that time.<sup>27</sup>

Diomedi also described what the Coeur d'Alene's Camas Prairie looked like in 1876 (obviously not being dry-farmed).<sup>28</sup>

This was a beautiful and fertile prairie, lying partly within their own reservation and then stretching away miles and miles beyond it, to the north and west, while on the south and east it was surrounded by ranges of mountains well supplied with timber, pine, tamarack and fir. This land was beautiful, well-watered, very productive and covered with tall bunch-grass. In this prairie, which was their own land, because a part of the reservation; all the different camps of the Coeur d'Alene, as well as people from surrounding tribes, had been accustomed to assemble during the summer season to dig camas.

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<sup>26</sup>De Smet, Father Pierre Jean. "Missions of the Rocky Mountains." *Annals of the Propagation of the Faith* Vol. 7 (1846): pp. 363, 368-369, and 372-375. [55]

<sup>27</sup>Diomedi, Alexander. *Sketches of Indian Life in the Pacific Northwest*. Fairfield, Washington: Ye Galleon Press, 1978 (originally published 1902), pp. 61-65. [60]

<sup>28</sup>Diomedi, Alexander. *Sketches of Indian Life in the Pacific Northwest*. Fairfield, Washington: Ye Galleon Press, 1978 (originally published 1902), pp. 63-64. [60] Other tribes were invited to join the Coeur d'Alene to dig in the Camas Prairie so long as there were abundant roots available and the other tribes abided by Coeur d'Alene rules.

A year later, in 1877, at the time of the outbreak of the Nez Perce War, Coeur d'Alene were reported to be digging camas near today's St. Maries, guarded by a tribal "army."<sup>29</sup>

At that time a general debate was recorded in which the Jesuit Priests argued for the Tribe to consolidate (consistent with the Jesuit's old strategy of "reduction" of tribes) their villages into one village near their Camas Prairie. Father Diomedi said he argued that Whites would soon cause their game to disappear, and said further, that

Neither should they depend upon the river, which would soon be filled with boats and rafts and logs for fuel which would cause the fish to migrate to safer and quieter places.<sup>30</sup>

Diomedi reported that he continued to lobby for the move into the spring of 1878, when he reported that near Rock Creek, a Coeur d'Alene family gave him "a few potatoes and some trout..." Diomedi stayed the night and his hosts fed him camas and dried fish for breakfast.<sup>31</sup> During that year, 1878, Diomedi and the priests finally convinced a large number of families to move to the Tribe's Camas Prairie, and the mission at Desmet was established. It is clear from Diomedi's description of the debate and eventual decision, as just described, that the Camas Prairie was uncultivated prior to the move and that the Coeur d'Alene were subsisting on their traditional hunting, fishing and digging of roots, especially camas. Although there is one mention of a "few" potatoes, the meals the priest described were all traditional Coeur d'Alene foods.<sup>32</sup>

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<sup>29</sup>Burns, Robert Ignatius. "Coeur d'Alene Diplomacy in the Nez Perce War of 1877," *Records of the American Catholic Historical Society of Philadelphia*. 63 (March 1952), p. 45. [24]

<sup>30</sup>Diomedi, Alexander. *Sketches of Indian Life in the Pacific Northwest*. Fairfield, Washington: Ye Galleon Press, 1978 (originally published 1902), pp. 68-69. [60]

<sup>31</sup>Diomedi, Alexander. *Sketches of Indian Life in the Pacific Northwest*. Fairfield, Washington: Ye Galleon Press, 1978 (originally published 1902), p. 72. [60]

<sup>32</sup>Of course the Tribe did have its own "water potatoes," but it is unclear from this Diomedi document which potato is referred to here.



Even with the influx of miners and prospectors and the pressures of other non-Indian settlers around them, the Coeur d'Alene continued their traditional subsistence practices in the 1880s. P. Arthius, a Jesuit scholastic, was reported to have said upon arriving at the mission in the early 1880s, "Although civilized, [these] Indians have not abandoned their laws and their own peculiar customs."<sup>33</sup>

Traditional subsistence practices by the Coeur d'Alene continued long after the 1880s and into the 20<sup>th</sup> century. For instance, Allen Pentland, who completed a Gonzaga University thesis on the original Jesuit mission at the mouth of the St. Joe River, mapped the location of fish traps that he reported were present and in use when his grandparents moved to the area.

There also existed at Mission Point a fairly extensive construction of Indian fish traps, built between the end of the plateau and the river, across the outlets of present day Goose Haven Lake and Peterson Creek. These traps were apparently used annually to harvest the fish imprisoned in the flooded meadow lands each spring, which were attempting to pass back into the river as the high water receded. Being constructed from willows, this fishery obviously predated the mission itself, and was still used by the Indians at the turn of the century.<sup>34</sup>

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A number of secondary sources also provide corroboration of the Tribe's reliance on traditional subsistence foods in the period 1877-1878, including:

Harms, Su, ed. *The Coeur D'Alene Teepee* Vols. I-III (1937-1940) (July 1980). Plummer, Idaho: Serento Press, pp. 85 and 110-111. [79]

Kowrach, Edward J., and Thomas E. Connolly (eds.) *Saga of the Coeur D'Alene Indians: An Account of Chief Joseph Seltice*. Fairfield, Washington: Ye Galleon Press, 1990, p. 229. [101]

<sup>33</sup>St. Hilaire, S. J. "Sacred Heart Mission, Idaho; History Manuscript," (1963) Gonzaga University. Oregon Province Archives of the Society of Jesus, Box 732, Early History 1872-1911, Spokane, Washington, p. 19. [165] This document was reporting a letter sent by Arthius in 1884:

Arthius, P. "Rocky Mountains." *Woodstock Letters*, Vol. 13 No. 3 (1884): pp. 381-382. [10]

<sup>34</sup>Pentland, Allen. "The Illfated Mission: The Sacred Heart Mission on the St. Joe River, 1842-46," [thesis] presented to Gonzaga History Department, May 1973; Sacred Heart Collection, Box 10; Special Collections, Gonzaga University map (Figure 26 in my initial report) and page 42. [699]

Other examples are found in the documentation from the 1909-1910 Washington Water Power Company hearings at which witnesses described the use of the lands around Coeur d'Alene Lake that were annually submerged, but used by the Indians for various purposes. Many witnesses testified about the Coeur d'Alene fishing and about the fish traps that were located in Section 2, T. 46 N., R. 3 W. The Fish Traps area is north of the bend in the St. Joe River in that section. J. S. Pence, who lived on the reservation between 1897 and 1902, testified that these traps were made by sinking sticks and branches into the high ground of the bottomlands, so that when fish had gone into these areas during high water, they could be caught in the weirs as they tried to get out. Fishing activities were not limited to the summer months. Several witnesses described ice fishing in the winter.<sup>35</sup>

Considerable first-hand evidence of the use of Coeur d'Alene Lake bottomlands for hunting, fishing and transportation was found for years during the first two decades of the twentieth century (1900-1920).<sup>36</sup>

There is ample evidence to demonstrate continued practices of hunting, fishing, and gathering for subsistence purposes during a period of many decades following the establishment of the 1873 Coeur d'Alene Reservation.

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<sup>35</sup>United States. Department of the Interior. Records Relating to Legal Action Taken by the Department of the Interior Against the Washington Water Power Company, 1909-10. Record Group 49, Records of the Bureau of Land Management, General Land Office, Unidentified Divisions, Entry 1028, Boxes 1-7. National Archives, Washington, D.C. Volume 3; pp. 1247, 1250, 1261, 1270, 1297-1298. [673]

<sup>36</sup>Hart, E. Richard. "A History of Coeur d'Alene Tribal Water Use: 1780-1915," November 25, 2015, for instance, see pp. 314-316, 319, 321-322, 324, 325, and 328-329.

## V. Establishment of the 1873 Coeur d'Alene Reservation

Dr. Wee's report suggests that the Coeur d'Alene Reservation was not established in 1873 and that thus the priority date for Coeur d'Alene water rights is a much later date. No historical evidence supports this conclusion.

In the 1860s and '70s, with pressures increasing on the outlying areas of their aboriginal territory, the Coeur d'Alene became increasingly concerned in permanently protecting the heart of their homeland. This required negotiations with the United States. The Tribe's conduct leading up to and during the 1873 Agreement negotiations make it clear that the Tribe's intent was to reserve the heart of its territory as a permanent homeland. The Coeur d'Alene Tribe envisioned the reservation described in the 1873 Agreement and established by the 1873 Executive Order as a permanent homeland, a place where they could continue to live as a cohesive tribe, without intrusions by Whites. As they had told Colonel Wright in 1858, they wanted a treaty, or agreement, that created a strong wall around them. As Chief Seltice said to the Northwest Commission, "Make the paper strong; make it so strong that we and all Indians living on it shall have it forever."<sup>142</sup> They conceived of the reservation as being built by the agreement with a "stone wall" constructed around it, to protect the Tribe from white interlopers.<sup>143</sup>

In the Northwest region of the United States, including the Plateau, the United States was intent on extinguishing aboriginal title to the best farmland and opening that land to non-Indian

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<sup>142</sup>United States. Congress. House. *Reduction of Indian Reservations*. House Executive Document No. 63. 50th Congress, 1st Session. Washington, D. C.: Government Printing Office, 1888, pp. 9-11, 30-43, 53-56, and 60-65. [203]

<sup>143</sup>Seltice *et. al.* to Commissioner of Indian Affairs, November, 1893, "Harrison Townsite on Coeur d'Alene Reservation," February 2, 1894, Special Case No. 200, Record Group 75, National Archives. [605]

settlement. Reservations could then be created out of the remaining territory, which included good hunting and grazing lands and which could be designed to include important fisheries and some potential farmland. A good example of this policy can be seen in the establishment of the Colville Reservation in 1872. When that reservation was established, the important farmlands in the Colville Valley, some already under cultivation by the Lakes (Sinixt) Tribe, were excluded from the reservation in order to make them available to Whites.<sup>144</sup> Reasons for including lands in the Colville Reservation included the argument that the reservation was more arid and sparsely populated than the lands to the east of the Columbia River, which were arable and better suited for White farming.<sup>145</sup> Commissioners Shanks, Bennett and Reed were participants in these actions, as well as the actions resulting in creation of the Coeur d'Alene Reservation the following year. The Commissioner of Indian Affairs, in his annual report for the year 1872, made it clear that reservations should have the capacity to provide access to hunting and fishing,

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<sup>144</sup>"The New Indian Reserve," *Walla Walla Union*, June 22, 1872. [764]

United States. Congress. Senate. *A Bill to Create a Reservation in the Territory of Washington for the Coeur D'Alene and Other Indian Tribes*. Sen. Misc. Doc. No. 32. 43d Congress, 1st Session. Washington, D. C.: Government Printing Office, 1874, p. 2. [210]

United States. Congress. House. *Proposed Indian Reservation in Idaho and Washington Territories*. Ex. Doc. No. 102. 43d Congress, 1st Session. Washington, D. C.: Government Printing Office, 1874, pp. 3-4.[198]

Shanks, John P. C., T. W. Bennett, and Henry W. Reed. "Extracts from Report of Commissioners," *Idaho Signal*, Vol. 1, p. 4, May 16, 1874.

Kappler, Charles J. *Indian Affairs, Laws and Treaties*, Vol. I. (Laws) "Colville Reserve," April 9, 1872 and July 2, 1872, Washington, D. C.: Government Printing Office, 1904, p. 916

<sup>145</sup>Winans to [Superintendent], May 27, 1872, enclosing Winans to Ross, September 24, 1870. Records of the Washington Superintendency of Indian Affairs, 1853-1874, File Microfilm of the National Archives: M. 5, roll 20, National Archives-Pacific Alaska Region (Seattle).

"The New Indian Reserve," *Walla Walla Union*, June 22, 1872.

If there was ever any doubt about the intent of the United States toward the Coeur d'Alene relative to agriculture, it was made abundantly clear during the allotment process that the United States preferred to see farmland (even when actually farmed by Indians) in the hands of Whites.

“which condition implies the occupation of a territory far exceeding what could possibly be cultivated.”<sup>146</sup> The Coeur d’Alene Reservation was designed in a manner consistent with this model stated by the Commissioner in 1872. It was the intent of both the United States and the Coeur d’Alene to have a reservation capable of providing the resources necessary for traditional subsistence.

The intent of the United States in establishing the 1873 Coeur d’Alene Executive Order Reservation was driven, in essence, by the Tribe’s intent. The United States understood that the Tribe would fight to protect its homeland and the United States understood that the Coeur d’Alene homeland consisted of a large aboriginal territory and that aboriginal title to much of that territory required extinguishment to facilitate White settlement. Negotiation was the only feasible tool available to the United States in order to create a reservation for the Tribe and extinguish aboriginal title to tribal territory outside that reservation.

The result of the interaction of the United States and the Coeur d’Alene Tribe in 1873 was an agreement to establish a permanent reservation in the heart of the Tribe’s homeland, one which included the environment necessary for hunting, fishing, gathering and transportation (all associated with tribal water use).

Under the terms of the 1873 Agreement, the Coeur d’Alene Tribe agreed to give up (or “cede”) a portion of the Tribe’s aboriginal territory in return for certain land, rights, and other considerations. The Tribe agreed to a cession of the portion of their aboriginal territory lying outside the reservation described in the agreement, provided that the United States paid for any improvements Coeur d’Alene might have in lands outside the boundaries of the proposed

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<sup>146</sup>Walker, Francis A. “Report of the Commissioner of Indian Affairs, November 1, 1872,” in *Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1872*. Washington: Government Printing Office, 1872, p. 13. [767]

reservation. The Tribe also agreed to allow the United States to construct roads through the new reservation.

In return for the cession of aboriginal territory, the Tribe was to receive a reservation and other valuable considerations. The boundaries were carefully devised. The agreement that was reached between the 1873 commission and the Coeur d'Alene called for setting aside a reservation "for the exclusive use of the Coeur d'Alene Indians" that would enclose all of Coeur d'Alene Lake, the Catholic Mission and all of the Coeur d'Alene River from the mission to the lake, and a stretch of the St. Joe River from near the location of the first mission to where it entered the lake, along with "all and singular the lands and privileges lying" within the proposed boundaries.

It is clear from the circumstances leading up to 1873 and the terms of the 1873 Agreement, which included, among other rights, a land base much larger than the tribally-rejected 1867 Executive Order Reservation, that the Tribe was more concerned with preserving the water resource than it was with the potential arable land that would have been within the 1867 Reservation boundaries. While under the proposed terms, the United States reserved the right to construct roads through the reserve, significantly, in return it promised "that the waters running into said reservation shall not be turned from their natural channel where they enter said Reservation." This provision is unique and not found in agreements made by the United States with other tribes. It could only have come from the Tribe and been included in the agreement as a result of the insistence of the Tribe. The Tribe was also aware of the value of water power and was to receive two mills.<sup>147</sup>

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<sup>147</sup>The Tribe was also to receive additional goods and money in return for the cession described in the agreement. In addition to the two mills, the United States agreed to provide agricultural implements, a schoolhouse, and one hundred seventy thousand dollars at five percent

This authority for the president to issue executive orders to establish Indian reservations has been carefully documented. By 1871, the only manner in which an Indian reservation could be established was by presidential executive order. During the period between 1871 and 1887, the president exercised a broadly established authority in setting aside millions of acres of land for Indian use and occupancy. During this period, the orders were considered to be of a temporary nature, until such time as Congress might act and make them permanent, as of the date of original issuance of the order.<sup>148</sup> As I document below, through numerous actions, reports and acts, Congress confirmed the efficacy of the 1873 Coeur d'Alene Reservation in subsequent years, and by the late 1880s had ratified that reservation and its effective date of 1873.

Though the 1873 Agreement was never ratified, the establishment of the 1873 Reservation was a triumph for the Coeur d'Alene Tribe, and the 1873 executive order reservation mirrored the reservation described in the agreement. It represented the protection of the heartland of the Tribe's traditional territory and necessary waters, including Coeur d'Alene Lake, the Coeur d'Alene River and the St. Joe River. More and more Whites were pouring into the country, and there had been terrific pressure to have the Tribe removed from their homeland to an already existing reservation. The alliance with the Catholic priests and intercession and assistance of the Catholics was of great help to the Tribe in this instance and helped result in the establishment, in 1873, of a 590,000 acre executive order reservation that contained nearly all of their village sites, all of Coeur d'Alene Lake, a large section of the Coeur d'Alene River, a

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interest, to be used to pay for a blacksmith, millers and other things that the President might deem proper to, in the government's view, advance the civilization of the Indians.

<sup>148</sup>Hart, E. Richard. "The Dawes Act and the Permanency of Executive Order Reservations," *Western Legal History: The Journal of the Ninth Judicial Circuit Historical Society*. Volume 12, Number 1(Winter/Spring/1999), pp. 11-12. This article was drawn from a larger work carried out for the United States Department of Justice. [768]

section of the St. Joe River, and a portion of the Tribe's Camas Prairie. The relations between the Tribe and the United States, the negotiations leading to the executive order, and the language in the agreement and executive order make it clear that the United States intended to convey Coeur d'Alene Lake and the rivers on the reservation to the Tribe, including the river water flowing into the reservation. The Tribe, in turn, continued to be dependent on these resources for their livelihood and survival. Even though the agreement was not ratified, because of these negotiations, the United States, in effect, recognized the extent of Coeur d'Alene territory, that it had never been ceded to the United States, and that the Tribe retained all of their original rights to that land. The Indian Claims Commission later concluded that the Coeur d'Alene "held all the waters of Spokane River from a little above Spokane Falls to the sources, including Coeur d'Alene Lake and all its tributaries."<sup>149</sup>

As noted above, in 1873, the United States understood that Congress needed to confirm the president's executive order in order to make it permanent and completely efficacious as of the date of issuance.<sup>150</sup> Below I provide numerous reports, actions and Acts of Congress that both confirmed and ratified the 1873 executive order and made its 1873 date efficacious.

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<sup>149</sup>United States. Indian Claims Commission. "Findings of Fact." Docket No. 81, *The Coeur d'Alene Tribe of Indians v. The United States of America*, 1955, National Archives, pp. 4-6 and 4--10. [276]

United States. Indian Claims Commission. "Opinion." Docket No. 81, *The Coeur d'Alene Tribe of Indians v. The United States of America*, 1955, pp. 4--15 and 4--28. [277]

United States, Indian Claims Commission. "Commission Findings." In *Interior Salish and the Eastern Washington Indians I: the Coeur d'Alenes*. New York: Garland Publishing, Inc., 1974, pp. 304, 308, 313, 326 and 328. [648]

Bischoff, William N. "The Coeur d'Alene Country, 1805-1892." In *Interior Salish and Eastern Washington Indians I*. New York: Garland Publishing Inc., 1974, pp. 302, 308, 313, 326. [16]

<sup>150</sup>Hart, E. Richard. "The Dawes Act and the Permanency of Executive Order Reservations," *Western Legal History: The Journal of the Ninth Judicial Circuit Historical Society*. Volume 12, Number 1(Winter/Spring/1999), pp. 11-47. [768]



Congress appropriated funds to support the reservation, appointed agents to oversee government operations there, reported on the reservation's establishment, provided annual reports on activities on the reservation, and passed laws recognizing, confirming and ratifying the reservation and its effective date of 1873.

The United States and the Congress of the United States immediately recognized and confirmed the president's 1873 executive order creating the Coeur d'Alene Reservation. For instance, beginning in 1874, the Commissioner of Indian Affairs and the Secretary of the Interior reported that "authority establishing" the Coeur d'Alene Indian Reservation was the executive order of November 8, 1873. Congressional confirmation of the reservation can be seen from the fact that funds were appropriated by Congress to survey the reservation. These facts were reported in annual reports over the next twenty years.<sup>151</sup>

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<sup>151</sup>United States. Commissioner of Indian Affairs. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1874*. Washington, D. C.: Government Printing Office, 1874, p. 134. [769]

For the years from 1875-1891, see, for example:

United States. Commissioner of Indian Affairs. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1875*. Washington, D. C.: Government Printing Office, 1875, p. 136. [770]

United States. Commissioner of Indian Affairs. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1881*. Washington, D. C.: Government Printing Office, 1881, p. 263. [771]

United States. Commissioner of Indian Affairs. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1882*. Washington, D. C.: Government Printing Office, 1882, p. 304. [772]

United States. Commissioner of Indian Affairs. *Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior for the Year 1883*. Washington, D. C.: Government Printing Office, 1883, pp. 226-227. [773]

United States. Commissioner of Indian Affairs. *Sixtieth Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior, 1891*. Part 2.—Statistics. Washington, D. C.: Government Printing Office, 1891, p. 110. [774]

United States. Commissioner of Indian Affairs. *Fifty-Ninth Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior, 1890*. Washington, D. C.: Government Printing Office, 1890, p. 437. [775]

Acknowledgment and conformation of the reservation is also documented in many other official government documents.<sup>152</sup>

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<sup>152</sup>United States. *Congressional Record*. 49th Congress, 2nd Session, pp. 272, 305, 502, 825, 1203, 1244, 1565, 1576-1577, 1682, 1736, 1974, 2729-2731. Washington, D. C.: Government Printing Office, 1886-1887. [186]

United States. *Congressional Record*. 50th Congress, 1st Session, pp. 19, 618, 693, 894, 1131, 2290, 2370, 3053, 4165, 4308, 4330, 4910. Washington, D. C.: Government Printing Office, 1887-1888. [187]

United States. Congress. House. *Spokane and Palouse Railway Company*. Report No. 3836. 49th Congress, 2d Session. Washington, D. C.: Government Printing Office, 1887. [200]

United States. Congress. House. *Washington and Idaho Railroad Company*. Report No. 4133. 49th Congress 2d Session. Washington, D. C.: Government Printing Office, 1887. [201]

United States. Congress. House. *Spokane and Palouse Railway Company*. Report No. 4134. 49th Congress, 2d Session. Washington, D. C.: Government Printing Office, 1887. [202]

United States. Congress. House. *Reduction of Indian Reservations*. House Executive Document No. 63. 50th Congress, 1st Session. Washington, D. C.: Government Printing Office, 1888. [203]

United States. Congress. House. *Washington and Idaho Railroad Company*. Report No. 1713. 50th Congress, 1st Session. Washington, D. C.: Government Printing Office, 1888. [204]

United States. Congress. House. *Ratification of Coeur D'Alene Indian Treaties in Idaho*. Report No. 2988. 51st Congress, 1st Session. Washington, D. C.: Government Printing Office, 1890. [205]

United States. Congress. House. *Ratification of Coeur D'Alene Indian Treaties in Idaho*. Report No. 1109. 51st Congress, 1st Session. Washington, D. C.: Government Printing Office, 1890. [206]

United States. Congress. Senate. *Letter from the Acting Secretary of the Interior*. Ex. Doc. No. 122. 49th Congress, 1st Session. Washington, D. C.: Government Printing Office, 1886. [212]

United States. Congress. Senate. *Letter from the Secretary of the Interior...about the Coeur D'Alene Indian Reservation*. Ex. Doc. No. 76. 50th Congress, 1st Session. Washington, D. C.: Government Printing Office, 1888. [213]

United States. Congress. Senate. *Resolution*. Misc. Doc. No. 36. 50th Congress, 1st Session. Washington, D. C.: Government Printing Office, 1888. [214]

United States. Congress. Senate. *A Letter of the Secretary of the Interior Relative to the Purchase of a Part of the Coeur D'Alene Reservation*. Ex. Doc. No. 14. 51st Congress, 1st Session. Washington, D. C.: Government Printing Office, 1889. [215]

United States. Congress. Senate. *Letter of the Secretary of the Interior Transmitting Correspondence in Relation to the Ratification and Confirmation of Certain Agreements Between the United States and the Coeur D'Alene Indians in Idaho Territory*. Misc. Doc. No. 95. 51st Congress, 1st Session. Washington, D. C.: Government Printing Office, 1890. [216]

United States. Congress (Statutes). *The Statutes at Large of the United States of America from December 1889, to March, 1891*, pp. 215-219, 989-991, 1027-1032. Washington, D. C.: Government Printing Office, 1891. [221]

The effective date of the Coeur d'Alene Reservation has always be confirmed by the United States to be 1873.

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See Also Hart, E. Richard. "A History of Coeur d'Alene Tribal Water Use: 1780-1915," November 25, 2015, especially pages 165, 203-204, 211, 213-214, 224, 227, 229, 232-234, 238-239, 243, 249, 252, 255-257, 259-260, and 262.

See also:

Hart, E. Richard. "The Dawes Act and the Permanency of Executive Order Reservations," *Western Legal History: The Journal of the Ninth Judicial Circuit Historical Society*. Volume 12, Number 1(Winter/Spring/1999), pp. 11-12. [768]

# EXHIBIT 2

## **A Short History of Hydroelectric Power**

E. Richard Hart

The use of moving water to provide a primitive source of power is very old. Greeks used water power to grind wheat at least 2,000 years ago. China also used water for primitive power at a very early point in time. Over the course of two millennia grist mills constantly improved, but the water wheel remained the only real source of the power to turn wheels and cause grain to be ground into flour. Flumes, pipes (wooden and metal), and some small wooden dams were used to direct water to wheels that powered grist mills.

The use of water to power electrical generation began in the late 19<sup>th</sup> century, but it was not until after the invention and implementation of alternating current (AC) that the possibility of impounding any serious amount of water was envisioned. Until the invention of AC generators, the power produced by water wheels could only be transmitted a short distance and was of little use to mines and mills that ground and processed heavy metal ore.

The use of water to produce electricity is a much more recent development. Electricity had been known to the European scientific community in the 18<sup>th</sup> century, but it was not until the 1870s that dynamos were invented that could convert mechanical power to electricity. In 1873, at the Vienna Exposition, Zenobe Gramme demonstrated a dynamo driven by a steam engine and transmitted that electricity over 500 yards to power a pump.<sup>1</sup>

In the late 1870s Thomas Edison and others demonstrated incandescent lighting powered by direct current (DC) generators. In 1879 a public lighting system was installed in Cleveland,

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<sup>1</sup>Hay, Duncan. *Hydroelectric Development in the United States, 1880-1940*. Washington, D. C.: Edison Electric Institute, 1991, p. 5.

Ohio and another, supplying twenty-two street lights in San Francisco was put into operation. The following year another public lighting system was opened in Connecticut. All of these projects made use of arc lighting. During the same year, Edison demonstrated the incandescent lamp in Menlo Park, New Jersey.<sup>2</sup>

Use of water turbines to create electricity in the United States began in about 1880. Widespread commercial use of electric hydropower did not occur until later decades, but the use of hydropower to generate electricity for the Coeur d'Alene mines began at a relatively early date, only twenty years later, around 1900. Elsewhere experimentation with electrical power production continued.

In 1880, a dynamo driven by a water turbine was used to provide arc lighting— a technique where an electric spark in the air between two conductors produces a light — to a theatre and storefront in Grand Rapids, Michigan, and in 1881, a dynamo connected to a turbine in a flour mill provided street lighting at Niagara Falls, New York; both of which used direct current technology.<sup>3</sup>

During the period from 1880 to 1895 experimentation with both direct and alternating current systems was carried out in the United States, including work in the western United States. In 1881 Salt Lake Light, Heat, and Power Company constructed a direct current system powered by “four steam boilers that drove a 150 horse-power engine,” which drove three

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<sup>2</sup>Hay, Duncan. *Hydroelectric Development in the United States, 1880-1940*. Washington, D. C.: Edison Electric Institute, 1991, pp. xix and 6-7.

<sup>3</sup>United States Department of Energy. “History of Hydropower,” on line at <http://energy.gov/eere/water/history-hydropower>.

electrical generators and electrified the central downtown streets in Salt Lake City, Utah.” Two years later Cornell University began offering courses in electrical engineering, “focused entirely on direct current technology.”<sup>4</sup>

By the 1880s, enough was known about electricity for some to envision the future potential for hydroelectric development.

Waterpower principles were well understood and practiced while the science of electrical engineering was growing rapidly. The biggest remaining obstacle to the expansion of the electric light and power industry was long distance transmission.

Until this time, Edison and others depended on direct current transmissions, which resulted in great “line losses” and required copper wires of a large diameter. Alternating current (AC) was developed in the 1880s and allowed for longer transmission of generated power through the use of transformers that stepped up or down the voltage. By the mid-1880s lighting plants using transformers and alternating current were being constructed.<sup>5</sup>

Then in 1883 an alternating current induction motor was invented by Nicola Tesla. With the invention of this AC induction motor, with much higher voltages that made possible by AC transformers, it was thought that long-distance transmission of electrical power might be possible.<sup>6</sup>

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<sup>4</sup>Newell, L. Jackson. *The Electric Edge of “Academe”: The Saga of Lucien L. Nunn and Deep Springs College*. University of Utah Press: Salt Lake City, 2015, pp. 18-19.

<sup>5</sup>Hay, Duncan. *Hydroelectric Development in the United States, 1880-1940*. Washington, D. C.: Edison Electric Institute, 1991, pp. 8-11.

<sup>6</sup>Hay, Duncan. *Hydroelectric Development in the United States, 1880-1940*. Washington, D. C.: Edison Electric Institute, 1991, p. 19.

Tesla immigrated from Servia, first worked for Thomas Edison and then as a consultant for George Westinghouse, for whom he patented his AC induction motor and transformer.

In the 1880s, and on into the 1890s, mining operations in the West began to turn to hydropower to run equipment associated with mines and mills. At first water power was used using flumes and pipes with Pelton wheels to run such heavy, but crucial equipment, as stamp mills. During the period from 1880 to 1895 huge advances were made in electrical generation and mining interests quickly recognized the opportunity to improve their operations.

By 1886 alternating current public lighting systems were in operation and experiments were under way in the 1880s to connect dynamos with water turbines.<sup>7</sup> During this first early period of hydroelectric development in the United States many advances were made, from 1880

....when early direct current stations were built for arc and incandescent lighting, and 1895 when the world's largest hydroelectric plant went on line at Niagra Falls, New York.

During this pioneering period, most hydro plants reflected a simple union of waterpower and electricity with comparatively little integration of the two technologies. Niagara Falls, and some of its contemporaries, demonstrated the economic viability of hydroelectric development coupled with long distance power transmission, established standards for the industry, and, most importantly, highlighted the fact that hydroelectricity demanded significant changes in hardware and attitudes toward the use of falling water in conjunction with electrical distribution.<sup>8</sup>

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<sup>7</sup>Hay, Duncan. *Hydroelectric Development in the United States, 1880-1940*. Washington, D. C.: Edison Electric Institute, 1991, p. 12 and preface.

<sup>8</sup>Hay, Duncan. *Hydroelectric Development in the United States, 1880-1940*. Washington, D. C.: Edison Electric Institute, 1991, preface.



Duncan Hay of the New York State Museum drafted a history of hydroelectric development in the United States during the period from its earliest development until 1940. The report was prepared for the Task force on Cultural Resource Management of the Edison Electric Institute and included a table with some of the important dates reflecting hydroelectric development in the United States. The following table includes important dates included in Hay's table for the early years of United States hydroelectric development.

**Early United States Hydroelectric Development<sup>9</sup>**

Date	Development
1879	The first commercial (DC) lighting system was installed in Cleveland, Ohio.
1879	Thomas Edison demonstrated the incandescent lamp (DC) in Menlo Park, New Jersey.
1880	In Grand Rapids, Michigan a (DC) dynamo driven by a water turbine was used to provide theatre and storefront illumination
1881	City street lamps were lighted using electricity from a (DC) turbine located in a flour mil in Niagara Falls, New York.
1882	This is the date of the first hydroelectric station to use the Edison (DC) system.
1883	Edison introduced the "three-wire" transmission (DC) system.
1886	In Great Barrington, Massachusetts the first American transformer was constructed and used to demonstrate long distance AC power transmission.
1887	The first hydroelectric plant in the West was opened in San Bernardino, California.
1888	The rotating field AC alternator was invented.
1887-1889	The first concrete dam was constructed in the United States in San Mateo Canyon, California (it was not a hydroelectric dam).

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<sup>9</sup>Hay, Duncan. *Hydroelectric Development in the United States, 1880-1940*. Washington, D. C.: Edison Electric Institute, 1991, pp. xix-xxii.

1889	The first AC hydroelectric plant was constructed at Willamette Falls, Oregon, with a thirteen mile transmission line to Portland.
1891	A Pelton waterwheel was constructed and used to generate power for a mine in Ames, Colorado.
1893	The first American three-phase electric plant near Redlands, California
1889-1893	The first dam designed specifically for hydroelectric power was constructed across the Colorado River.
1897-1900	Long transmission lines (17-140 miles) constructed to deliver power.
1901	Date of the first Federal Water Power Act.
1902	United States Bureau of Reclamation established.
1906	A fully submerged hydroelectric plant was constructed in Maryland.

The work of Tesla and Westinghouse meant new opportunities for long-range transmission of electrical power were becoming possible by the mid 1880s.

As high voltage alternating current offered new possibilities for long distance transmission, hydro developers began looking toward waterpower sites located some distance from urban loads.<sup>10</sup>

Direct current systems were developed and the first small hydroelectric plants were constructed in the early 1880s. "These DC plants were all highly localized undertakings." But the development of AC systems allowed for less localized facilities. A facility at Willamette Falls was established in 1889 to provide power to Portland, Oregon, some thirteen miles away.<sup>11</sup>

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<sup>10</sup>Hay, Duncan. *Hydroelectric Development in the United States, 1880-1940*. Washington, D. C.: Edison Electric Institute, 1991, p. 130.

<sup>11</sup>Hay, Duncan. *Hydroelectric Development in the United States, 1880-1940*. Washington, D. C.: Edison Electric Institute, 1991, pp. 13-14 and 16.

United States Department of Energy. "History of Hydropower," on line at <http://energy.gov/eere/water/history-hydropower> reported that the first small hydroelectric dam

This was a project that could not have been dreamed of a mere ten years before.

By 1886, [George] Westinghouse had teamed with entrepreneurs in Massachusetts to provide alternating current for street lighting, but it was generated at low voltages and was not applied to industry or across significant distances.”<sup>12</sup>

Thomas Edison was promoting direct current systems and George Westinghouse was interested in AC systems in 1890. Entrepreneur Lucien L. Nunn convinced Westinghouse to embark on a project to develop an AC system to help power the Telluride, Colorado mining district. In late 1890 Westinghouse delivered to the mining district the largest alternating current generator ever constructed. At 100 horsepower it could generate “an astonishing 3,000 volts.” The generator was put to work in Ames, Colorado, and was run by a six-foot diameter Pelton water wheel. In 1891 the hydro-powered generator delivered power to a mining operation two and one half miles away, where it powered an ore stamping mill.<sup>13</sup>

During the same year, 1891, in Germany an even larger AC system was constructed for an exhibition in Frankfurt-Lauffen. These and other AC projects at the time demonstrated that the future of commercial development was with AC systems.<sup>14</sup>

1895 is credited with being the end of the first period of United States hydroelectric

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is credited as being established in Britain in 1870.

<sup>12</sup>Newell, L. Jackson. *The Electric Edge of “Academe”: The Saga of Lucien L. Nunn and Deep Springs College*. University of Utah Press: Salt Lake City, 2015, p. 374, footnote 70.

<sup>13</sup>Newell, L. Jackson. *The Electric Edge of “Academe”: The Saga of Lucien L. Nunn and Deep Springs College*. University of Utah Press: Salt Lake City, 2015, pp. 21-22.

Hay, Duncan. *Hydroelectric Development in the United States, 1880-1940*. Washington, D. C.: Edison Electric Institute, 1991, P. 17.

<sup>14</sup>Newell, L. Jackson. *The Electric Edge of “Academe”: The Saga of Lucien L. Nunn and Deep Springs College*. University of Utah Press: Salt Lake City, 2015, p. 22.

development.<sup>15</sup> In that year a hydroelectric plant was opened at Niagara Falls. With the demonstration of polyphase AC electric current from the 1895 plant at Niagara Falls, many new projects began to be envisioned.

Polyphase AC offered a means to economically develop  
water-power sites far from centers of demand and in steep canyon  
locations that prohibited hydro-mechanical development.<sup>16</sup>

In Utah and southern Idaho Lucien L. Nunn was working to develop new hydroelectric generation plants. In 1894 Nunn filed for water rights on the Provo River and two years later on the Logan River in Utah. His plant on the Logan River was the first to produce power in Utah in 1896. In 1898 he finished a plant on the Provo River, with a long line delivering power to a mining operation. Over the next ten years Nunn developed several other power plants using water to power AC generators. In 1912 his extensive distribution system in northern Utah and southern Idaho was sold to Utah Power and Light Company.<sup>17</sup>

In the Coeur d'Alene mining district, electric power was also coming into operation beginning in the 1890s. In 1891 a Coeur d'Alene mine manager put in an Edison (DC) power plant for his mine. In 1899, mine officials began to contemplate use of hydropower to provide an uninterrupted source of power to the mines on the upper Coeur d'Alene River. By 1900

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<sup>15</sup>Hay, Duncan. *Hydroelectric Development in the United States, 1880-1940*. Washington, D. C.: Edison Electric Institute, 1991, preface.

<sup>16</sup>Hay, Duncan. *Hydroelectric Development in the United States, 1880-1940*. Washington, D. C.: Edison Electric Institute, 1991, pp. 27-28.

<sup>17</sup>Newell, L. Jackson. *The Electric Edge of "Academe": The Saga of Lucien L. Nunn and Deep Springs College*. University of Utah Press: Salt Lake City, 2015, pp. 27-28 and 50. In 1917 Nunn was involved in a lawsuit over unauthorized use of public lands for purposes of power generation. He and his co-defendants lost. The prosecution cited an 1896 act that gave the Secretary of the Interior authority over the United States public lands. (page 61)

arrangements were made to begin construction of an AC hydroelectric facility at Post Falls.<sup>18</sup>

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<sup>18</sup>Fahey, John. *The Ballyhoo Bonanza: Charles Sweeny and the Idaho Mines* (Seattle: University of Washington Press, 1971), p. 115.

# EXHIBIT 3

## **The Purported Frederick Post Agreement**

During the 1889 negotiations, according to the United States negotiating commission, the Coeur d'Alene "displayed surprising business sagacity, coupled with an exalted idea of the fulfillment of promises."<sup>1</sup> One "exalted idea" of the Coeur d'Alene was that they objected to making another agreement until the former (1887) "treaty" was ratified. As a result of the Tribe's demands, Commissioner Simpson asked for authority to insert a clause in the newly proposed "treaty" making it invalid until the former "treaty" was also ratified.<sup>2</sup>

Eventually the Coeur d'Alene agreed to a cession of a portion of the land in their reservation. As a result of the demands of the Coeur d'Alene, when Congress passed the annual appropriation act for the Indian Department on March 3, 1891, it included a provision ratifying the 1889 agreement, and ratifying the 1887 agreement.<sup>3</sup>

The 1887 agreement required the United States to compensate the Tribe a total of \$150,000 over a period of fifteen years. In addition, the agreement called for construction of facilities where the Tribe could grind wheat and mill lumber.

As soon as possible after the ratification of this agreement by

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<sup>1</sup>Receipt, January 25, 1889, Letters Received, Record Group 75, National Archives. [Hart Lake 532]

Morgan to Cole, August 5, 1889, Letters Received, Colville Agency, Record Group 75, Pacific Northwest Regional Archives; Seattle, Washington; National Archives. [Hart Lake 533]

Morgan to Cole, August 6, 1889, Letters Received, Colville Agency, Record Group 75, Pacific Northwest Regional Archives; Seattle, Washington; National Archives. [Hart Lake 534]

<sup>2</sup>Simpson to Commissioner, August 8, 1889, telegram, Letters Received, Record Group 75, National Archives. [Hart Lake 535]

<sup>3</sup>Kappler, Charles Joseph. *Indian Affairs, Laws and Treaties*. Washington, D. C.: Government Printing Office, 1904; Vol. I, pp. 419-432. [Hart Lake 99]

Congress, there shall be erected on said reservation a saw and grist mill, to be operated by steam, and an engineer and miller employed, the expenses of building said mill and paying the engineer and miller to be paid out of the funds herein provided.<sup>4</sup>

Ironically, the 1887 agreement also included the language that “no part of said reservation shall ever be sold, occupied, open to white settlement, or otherwise disposed of without the consent of the Indians residing on said reservation.”<sup>5</sup>

The original 1889 agreement included four articles dealing with the cession of a portion of the Tribe’s land and the payment for said cession. The fourth article included a provision saying the agreement was not binding until the 1887 agreement was “duly ratified by Congress.”<sup>6</sup>

When the agreement was reported to Congress by the Secretary of the Interior, the transcript of the agreement included the four articles that were in the original agreement, which was signed by the commissioners who negotiated the agreement, three witnesses, Chief Andrew Seltice, two “second chiefs,” and over one hundred other Coeur d’Alene men.<sup>7</sup>

The act which was finally passed by Congress in 1891 ratifying both the 1887 and the 1889 agreements not only included the provisions necessary to appropriate the necessary funds to satisfy the agreements, it also included a new provision allowing Frederick Post to obtain fee

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26 Stat., 1026-1032. [Hart Lake 1396 and Hart Lake 659]

<sup>4</sup>United States. Congress. Senate. *A Letter of the Secretary of the Interior Relative to the Purchase of a Part of the Coeur D’Alene Reservation*. Ex. Doc. No. 14. 51st Congress, 1st Session. Washington, D. C.: Government Printing Office, 1889, p. 68 (Article 6). [Hart Lake 215]

<sup>5</sup>United States. Congress. Senate. *A Letter of the Secretary of the Interior Relative to the Purchase of a Part of the Coeur D’Alene Reservation*. Ex. Doc. No. 14. 51st Congress, 1st Session. Washington, D. C.: Government Printing Office, 1889, p. 68 (Article 5). [Hart Lake 215]

<sup>6</sup>“Agreement,” Letters Received, #26974, 1889, Record Group 75, National Archives. [Hart Lake 646]

<sup>7</sup>United States. Congress. Senate. *A Letter of the Secretary of the Interior Relative to the Purchase of a Part of*



title to a parcel of land in the area ceded by the Tribe. The provision asserted that Chief Andrew Seltice had twenty-eight years earlier, in 1871, sold, "with the consent" of his people, the area around what is known today as Post Falls, "for a valuable consideration." This provision in the 1891 act was asserted to have been signed with an "x" by Andrew Seltice on September 26, 1889.<sup>8</sup>

I have found not reference in the commissioners' report to any such agreement being signed by Seltice at the time of the negotiations in 1889. The Treaty was signed on September 9, 1889. Two days later the commissioners telegraphed the Indian Office and reported that they had reached an agreement with the Tribe. On the same day, September 11, 1889, they submitted their report on the negotiations.<sup>9</sup>

Seltice was reported to have been sick on September 8, but had returned to the negotiations on September 9 in time to sign the 1889 agreement.<sup>10</sup> The section of the 1891 congressional legislation containing the new, purported agreement with Post was said to have been signed by Seltice on September 16, 1889, a week after the close of the official negotiations. The purported document was said to have been signed by Seltice on that date with an "x." The document was not reported to have been witnessed or notarized.

During 1889, both before and after the commission negotiated the cession with the Tribe,

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*the Coeur D'Alene Reservation*. Ex. Doc. No. 14. 51st Congress, 1st Session. Washington, D. C.: Government Printing Office, 1889. [Hart Lake 215]

<sup>8</sup>Kappler, Charles Joseph. *Indian Affairs, Laws and Treaties*. Washington, D. C.: Government Printing Office, 1904; Vol. I, p. 424. [Hart Lake 99]

26 Stat., 1031-1032. [Hart Lake 659]

<sup>9</sup>Simpson, Shoup and Humphrey to Commissioner, September 11, 1889, telegram, Letters Received, Record Group 75, National Archives. [Hart Lake 539]

Simpson, *et. al.*, to Commissioner Morgan, September 11, 1889, Letters Received, Record Group 75, National Archives. [Hart Lake 540]

<sup>10</sup>United States. Congress. Senate. A Letter of the Secretary of the Interior Relative to the Purchase of a Part of the Coeur D'Alene Reservation. Ex. Doc. No. 14. 51st Congress, 1<sup>st</sup> Session. Washington, D. C.: Government Printing Office, 1889. [Hart Lake 215]

there were reports of trespass by Post on the Coeur d'Alene Reservation.<sup>11</sup> In addition, both before and after the negotiated cession agreement, Frederic Post wrote to the Indian Office asking for some kind of "protection."<sup>12</sup> Three days after the date of the purported document was signed by Seltice, the Acting Commissioner of Indian Affairs seemed to be unaware of it when he responded to a complaint of trespass by Post on the Coeur d'Alene Reservation. After receiving a complaint of Post trespassing on the reservation in April, 1889, the Indian Office had directed the Agent to investigate. Then, on September 19, 1889, the Acting Commissioner responded to another complaint about Post, by saying, "the rights of Mr. Post should be fully investigated, as per letter of instructions to U. S. Indian Agent Gwydir, Dated May 20, 1889, which letter should be among the Agency files." The Acting Commissioner also referred to the complaint of a Coeur d'Alene woman who said Post was "using water power located on lands claimed by her, for the use of his saw mill located on the Spokane River." The Acting Commissioner continued:

I have to say that the Commission recently appointed for that purpose, appears to have negotiated an agreement with that tribe of Indians, whereby they relinquish that portion of the Coeur d'Alene

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<sup>11</sup>Gwydir to Indian Office, April 5, 1889, Letters Received, Record Group 75, National Archives. [Hart Lake 524]

Acting Commissioner to Cole, September 19, 1889, Letters Received, Colville Agency, Record Group 75, Pacific Northwest Regional Archives; Seattle, Washington; National Archives. [Hart Lake 526]

See also:

Parker to Ingalls, March 16, 1890, Letters Received, Record Group 75, National Archives. [544]

Morgan to Cole, May 6, 1890, Letters Received, Colville Agency, RG 75, Pacific Northwest Regional Archives; Seattle, Washington; National Archives. [542]

Lee to President Harrison, May 9, 1890, Letters Received, Record Group 75, National Archives. [545]

Eleanor Lee to Commissioner of Indian Affairs, March 16, 1891, Letters Received, Record Group 75, National Archives. [546]

<sup>12</sup>Note to File, May 31, 1889, Letters Received, Record Group 75, National Archives. [Hart Lake 523]

Frederick Post to Indian Office, September 28, 1889, Letters Received, Record Group 75, National Archives. [Hart Lake 525]

reservation which includes the lands claimed by Mrs. Lee.

Should Congress ratify the agreement, it will obviate the necessity of any further action in the matter.

The Commissioner of Indian Affairs did not say at this time that ratification of the 1889 agreement would also ratify Post's title to land in the ceded area.<sup>13</sup>

Controversy over Post's holdings on the Spokane River had continued, and the Indian Office referred the matter to the Senate Committee on Indian Affairs. The Senate Committee on Indian Affairs had reviewed the 1887 and 1889 agreements and submitted draft legislation to the Secretary of Interior for review. The Secretary referred the draft to the Commissioner of Indian Affairs who responded to the Senate providing details on how the appropriations act should be worded, with instructions on funding the required grist/saw mill [powered by steam], the hiring and payment of a blacksmith, per capita payments to tribal members, the survey of the reservation, and the disposal of lands opened to settlement.

Writing on February 12, 1890, the Commissioner of Indian Affairs concluded that the construction of one mill for the Coeur d'Alene could satisfy the requirements for facilities to both grind wheat and mill lumber.<sup>14</sup>

Writing on June 28, 1890 the Commissioner of Indian Affairs reported that Congress was now considering passage of an act that would ratify the agreements with the Coeur d'Alene and that the legislation also would approve a provision to ratify the purported agreement between Seltice and Post in 1871. The Commissioner reported he had received a letter from Post dated

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<sup>13</sup> Acting Commissioner to Cole, September 19, 1889, Letters Received, Colville Agency, Record Group 75, Pacific Northwest Regional Archives; Seattle, Washington; National Archives. [Hart Lake 526]

<sup>14</sup> United States. Congress. House. *Ratification of Coeur D'Alene Indian Treaties in Idaho*. Report No. 1109. 51st Congress, 1st Session. Washington, D. C.: Government Printing Office, 1890, pp. 30-33. [206]

September 28, 1889, and submitted that to the Interior Department,

...enclosing a copy of an affidavit from Chief Saltice, to the effect that he (Saltice) sold the place known as Post's Falls to Post in the year 1871, for a valuable consideration, before the establishment of the reservation, and that he had protected him in his possession ever since.

The Commissioner also reported he had received and passed on to the Department other correspondence that provided evidence that Seltice had indeed made the agreement with Post in 1871 and had also begun developing the river channel for the purpose of water-power, as required in the purported agreement.<sup>15</sup> The Indian Office recommended that the Committee could attach the Seltice/Post agreement to the legislation.<sup>16</sup>

In 1894 it was reported that Post had fulfilled the requirements set out in the legislation ratifying the purported agreement with Seltice and Post was thus granted a patent to the land in question.<sup>17</sup> Over the course of the next seven years multiple actions, legal and administrative, resulted in title to the Post Falls land being transferred to Washington Water Power Company (and eventually its successor Avista) and the eventual completion of the construction of Post

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<sup>15</sup>Morgan to Cole, June 28, 1890, Letters Received, Colville Agency, RG 75, Pacific Northwest Regional Archives; Seattle, Washington; National Archives. [543]

<sup>16</sup>United States. Congress. Senate. *Letter of the Secretary of the Interior Transmitting Correspondence in Relation to the Ratification and Confirmation of Certain Agreements Between the United States and the Coeur D'Alene Indians in Idaho Territory*. Misc. Doc. No. 95. 51st Congress, 1st Session. Washington, D. C.: Government Printing Office, 1890. [216]

United States. Congress. House. *Ratification of Coeur D'Alene Indian Treaties in Idaho*. Report No. 2988. 51st Congress, 1st Session. Washington, D. C.: Government Printing Office, 1890. [205]

Mitchell to Indian Office (note to file), January 28, 1890, Letters Received, Record Group 75, National Archives. [541]

<sup>17</sup>United States. General Land Office. Patent. United States of America to Frederick Post. September 22, 1894. Deed Record Book L, p. 623, Kootenai County Courthouse; Coeur d'Alene, Idaho. [Hart Lake 838]

Falls Dam in 1906.<sup>18</sup>

In *Saga of the Coeur d'Alene Indians*, Joseph Seltice, the son of Andrew Seltice, reported (through his several editors and family members) the history of the Tribe as recounted to him by his father. The father of Andrew Seltice was Moses Seltice, who was located at Post Falls in the

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<sup>18</sup>Some of the documents related to this transfer and questions related to the exchange can be found in the following:

White to Richards, May 23, 1900, Washington Water Power Company Records, Box 11, Folder 1900, Washington State University Archives; Pullman, Washington. [Hart Lake 1097]

Idaho. Deed. Frederick Post to R. K. Neill. August 1, 1900. Deed Record Book U, pp. 164-165; Kootenai County Courthouse; Coeur d'Alene, Idaho. [Hart Lake 759]

Richards to White, January 28, 1901, Washington Water Power Company Records, Box 11, Folder 1901, Washington State University Archives; Pullman, Washington. [Hart Lake 1053]

United States, Circuit Court of Appeals, Ninth Circuit, "Lawyer v. Post *et al.*" *The Federal Reporter*, vol. 109. July-October, 1901 (St. Paul: West Publishing Co., 1901): 512-15. [Hart Lake 814]

Deed, Quit Claim Deed, Frederick Post to R. K. Neill, August 1, 1900, recorded in Book U of Deeds, p. 166-67, Kootenai County Records Office, Coeur d'Alene, Idaho. [Hart Lake 979]

980. Deed, Frederick Post to R. K. Neill, August 1, 1900, recorded in Book U of Deeds, p. 168-69, Kootenai County Records Office, Coeur d'Alene, Idaho.

Idaho. Warranty Deed. Between R. K. Neill, et. al, and Washington Water Power Company. January 9, 1902. Deed Record Book 1, pp. 11-13. Kootenai County Courthouse; Coeur d'Alene, Idaho. [Hart Lake 758]

Deed, Indenture, Alice L. Martin and A. M. Martin to Washington Water Power Company, December 17, 1904, Deed Record Book 9, p. 464-65, Kootenai County Records Office, Coeur d'Alene, Idaho. [Hart Lake 983]

White to Richards, August 29, 1901, Washington Water Power Company Records, Box 11, Folder 1901, Washington State University Archives; Pullman, Washington. [Hart Lake 1104]

White to Richards, September 21, 1901, Washington Water Power Company Records, Box 11, Folder 1901, Washington State University Archives; Pullman, Washington. [Hart Lake 1105]

Deed, Quit Claim Deed, Frederick Post and wife to R. K. Neill, January 18, 1902, recorded in Book 1 of Deeds, p. 9-10, Kootenai County Records Office, Coeur d'Alene, Idaho. [Hart Lake 981]

Deed, Indenture, Idaho Lumber and Manufacturing Company to Washington Water Power Company, December 17, 1904, Deed Record Book 9, p. 460-63, Kootenai County Records Office, Coeur d'Alene, Idaho. [Hart Lake 982]

Federal Energy Regulatory Commission, "Matter of the Application for License of the Washington Water Power Company," Project Nos. 2545-005 and 009 (Phase II). Opinion No. 199, issued November 16, 1983, (25 FERC 61, 228.), p. 1-4, 10, 22, 26-27, 29, 32. [Hart Lake 736]

For related information, see also:

Watkins, Marilyn P. "Washington Water Power Company and the Post Falls Dam Report and Source Materials," July 3, 1996, especially pp. 5-15 [Hart Lake Exhibit 1438]

Crosby, Edward J. *The Story of the Washington Water Power Company and its part in the History of Electric Service in the Inland Empire, 1889-1930 Inclusive*, n.p., n.d. [Hart Lake 48]

Cross, Alden. "Indians Claim Ownership to Site of Post Falls Dam," *Spokesman Review*, July 3, 1973, p. 1. [Hart Lake 49]

Anon. "A 100-Mile Side Trip Through the Scenic Beauties of the Inland Empire, Through the Panhandle of Idaho by the Shadowy St. Joe and Coeur d'Alene Lake." Chicago, Milwaukee & St. Paul RY.: n. p., 1915. [Hart Lake 696]

Blewett, Steve, "A History of the Washington Water Power Company, 1889 to 1989: Building On a Century of Service," (Spokane, WA: The Washington Water Power Company, March 8, 1989), pp. 7-9, 11, 21.

mid to late nineteenth century. According to Joseph, his father Andrew had reported that his father was “frequently bothered” by Post, who promised him \$500 for his house and barn if Moses would move away. Andrew Seltice was Moses’ son, Andrew. Andrew was the father of Joseph, and told his father not to move unless Post actually put the money in his hands.<sup>19</sup>

Andrew said that although Post offered the \$500 payment for the land in question to Moses Seltice, he never intended to pay him. According to Joseph Seltice, recounting what his father told him, Post really wanted to be able to obtain all the land on both sides of the river in that location for \$2.50 an acre (apparently as a homestead), which would be less expensive than the \$500 payment for the falls alone.<sup>20</sup>

According to Kimberly Rice Brown, who wrote an appendix attached to Joseph Seltice’s account, Post constructed “the first gristmill” in the area of Spokane Falls in 1877. According to Brown, Post had “operated a gristmill and used water power in Illinois before coming west. Brown said that Post “moved back to Post Falls in 1879.” She reported that there was no evidence to support the idea that a treaty (or agreement) was made there in 1871. Her statements suggest that Post did not actually reach an agreement with Andrew Seltice until the time of the 1889 agreement. She said Post had long wanted to take control of the Post Falls area and finally did so when he obtained the consent of “Old Chief Seltice and the Coeur d’Alene Indians” at the time of the agreement and when the Interior Department and congress approved the purported transaction.<sup>21</sup>

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Hart Lake 705]

<sup>19</sup>Kowrach, Edward J., and Thomas E. Connolly (eds.) *Saga of the Coeur d’Alene Indians: An Account of Chief Joseph Seltice*. Fairfield, Washington: Ye Galleon Press, 1990, pp. 25, 84 and 215. [Hart Lake 101]

<sup>20</sup>Kowrach, Edward J., and Thomas E. Connolly (eds.) *Saga of the Coeur d’Alene Indians: An Account of Chief Joseph Seltice*. Fairfield, Washington: Ye Galleon Press, 1990, p. 233. [Hart Lake 101]

<sup>21</sup>Brown, Kimberly Rice. “Appendix B: Overview of Coeur d’Alene History,” in *Saga of the Coeur d’Alene Indians: An Account of Chief Joseph Seltice* (Kowrach, Edward J., and Thomas E. Connolly, editors). Fairfield,

The editors of *Saga of the Coeur d'Alene Indians: An Account of Chief Joseph Seltice*, included an appendix with the text of H.R. 7703, which apparently was the basis for the statute (26 Stat., 1026-1032) which ratified the 1887 and 1889 agreements. The transcript provided by the editors of this book includes a section at the end of the September 16, 1889 purported agreement with Andrew Seltice, which appears to be a portion of the original document which shows it was an affidavit in which the notary public (George A. Manning) and Fred M. Manning witness the agreement between Post and Seltice in the office of the County Recorder of Kootenai County, Idaho.<sup>22</sup>

Humans have constructed dams for over one thousand years. An early type of dam was the timber crib dam, constructed in the manner of a log cabin. Timber crib dams were used during the industrial revolution in Europe and in frontier areas of the West in the United States in the 19<sup>th</sup> century. They could be speedily constructed but being of wood required much maintenance.

Historian John Fahey reported that after Post acquired Post Falls (apparently after passage of the 1891 act ratifying his purported agreement with Andrew Seltice), he constructed a log crib dam.<sup>23</sup> Fahey reported that this dam raised the level of the Post Falls' "natural forty-foot fall about four feet" and resulted in the potential for producing 4,000 horse power. Of this total capacity, about 3,500 were sold to R. K. Neil. According to Fahey, Neil envisioned raising the level of Coeur d'Alene Lake and using that water to run a power house with a potential of producing over 15, 000 horse power. Although Neil originally envisioned delivering power to

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Washington: Ye Galleon Press, 1990, pp. 315-316. [Hart Lake 101]

<sup>22</sup>Kowrach, Edward J., and Thomas E. Connolly (eds.) *Saga of the Coeur d'Alene Indians: An Account of Chief Joseph Seltice*. Fairfield, Washington: Ye Galleon Press, 1990, pp. 357-358. [Hart Lake 101]

<sup>23</sup>Fahey, John, *The Ballyhoo Bonanza: Charles Sweeny and the Idaho Mines* (Seattle: University of Washington Press, 1971), pp. 247-248, footnote 9. [Hart Lake 732]

the Coeur d'Alene mines using compressed air, Washington Water Power became aware of Westinghouse's work and by 1901 was considering an electric power generation plant.<sup>24</sup>

By this point in time, 1901, Washington Water Power seems to have been able to envision a dam with the potential of raising Coeur d'Alene Lake sufficiently to use the water to produce hydroelectric power to transmit to the Coeur d'Alene mines.

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<sup>24</sup>Fahey, John, *The Ballyhoo Bonanza: Charles Sweeny and the Idaho Mines* (Seattle: University of Washington Press, 1971), pp. 115-117. [Hart Lake 732] It should be noted that Fahey was incorrect in his reporting of details related to the purported 1871 agreement, the 1891 homestead law amendment, and details related to the 1891 ratification of the purported Seltice agreement.



# EXHIBIT 4

- cluding rent of warehouses and pay of necessary employees; advertising, at rates not exceeding regular commercial rates; inspection and all other expenses connected therewith, including telegraphing, forty thousand dollars.
- Transportation of supplies.** Transportation of Indian supplies: For this amount, for necessary expenses of transportation of such goods, provisions, and other articles for the various tribes of Indians provided for by this act, including pay and expenses of transportation agents, two hundred and fifty thousand dollars.
- Homesteads.** For this amount, to enable Indians to avail themselves of the benefits of the homestead act, five thousand dollars.
- Allotments in severalty.** For survey and subdivision of Indian reservations and of lands to be allotted to Indians, and to make allotments in severalty, to be expended by the Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, twenty-five thousand dollars.
- Negotiations with Chippewas, etc., for modification of treaties.** To enable the Secretary of the Interior to negotiate with the several tribes and bands of Chippewa Indians in the State of Minnesota for such modification of existing treaties with said Indians and such change of their reservation as may be deemed desirable by said Indians and the Secretary of the Interior, and as to what sum shall be a just and equitable liquidation of all claims which any of said tribes now have upon the Government; and also to enable said Secretary to negotiate with the various bands or tribes of Indians in Northern Montana and at Fort Berthold, in Dakota, for a reduction of their respective reservations, or for removal therefrom to other reservations; and also to enable said Secretary to negotiate with the Upper and Middle bands of Spokane Indians and Pend d'Oreilles Indians, in Washington and Idaho Territories, for their removal to the Colville, Jocko, or Oeur d'Alene reservations, with the consent of the Indians on said reservations; and also to enable said Secretary to negotiate with said Indians for the cession of their lands to the United States; and also to enable said Secretary to negotiate with the Oeur d'Alene Indians for the cession of their lands outside the limits of the present Oeur d'Alene reservation to the United States, fifteen thousand dollars, or so much thereof as may be necessary, to be immediately available; but no agreement made shall take effect until ratified by Congress.
- Indian depredation claims, continuing investigation.** Indian-depredation claims: For continuing the investigation and examination of certain Indian-depredation claims originally authorized, and in the manner therein provided for, by the Indian appropriation act approved March third, eighteen hundred and eighty-five, twenty thousand dollars; and the examination and report shall include claims, if any, barred by statute, such fact to be stated in the report; and all claims whose examination shall be completed by January first, eighteen hundred and eighty-seven, shall then be reported to Congress, with the opinions and conclusions of the Commissioner of Indian Affairs and the Secretary of the Interior upon all material facts, and all the evidence and papers pertaining thereto.
- Report to be made by January 1, 1887.**
- Vol. 23, p. 376.**

**Support of schools.****FOR SUPPORT OF SCHOOLS.**

- Day and industrial schools, etc.** For support of Indian day and industrial schools, and for other educational purposes not hereinafter provided for, six hundred and fifty thousand dollars; for the construction and repair of school buildings, fifty-five thousand dollars; and for purchase of horses, cattle and sheep, goats, and swine for schools, ten thousand dollars; in all, seven hundred and fifteen thousand dollars: *Provided*, That the entire cost of any boarding-school building to be built from the moneys appropriated hereby, including furniture, shall not exceed ten thousand dollars; and the entire cost of any day-school building to be so built shall not exceed six hundred dollars: *And provided further*, That the school year of the Indian schools herein appropriated for shall be held to include all usual and necessary vacations: *And provided further*, That the
- Construction and repairs.**
- Horses, cattle, etc.**
- Provisions.**
- Limit of cost of buildings.**
- Vacations.**

# EXHIBIT 5

TRIAL EXHIBIT



\* 0300\*

EXHIBIT NUMBER

Received of \_\_\_\_\_  
the sum of \_\_\_\_\_  
Dated \_\_\_\_\_

2007

From Elbridge of  
Concord Mass June

1000

Concerning the  
allotment of these  
P.L.s.

100

Respectfully referred to

Adm. Com. of Ind. Affs.

20558200, Vol. 9.3



The chiefs and people of the Coeur d'Alene beg  
of the Great Chief to listen to our words: already we  
did write last winter, requesting a part of our land  
to be allotted for our own exclusive use. we gave our  
answer: only we have vague reports; then something had  
been granted: but some few white men have already trespassed  
on it, though very little as yet: now allow us to speak  
more freely.

In our first petition we made no mention of our  
Church nor of the two villages of St. Joseph and Coeur  
d'Alene rivers, because in our ignorance we thought it  
a matter of course. When so winter past we had  
received the Word of God, we set to work to build him  
a house: it is very dear to us for many reasons: It is  
the work of our own hands, and we feel some way  
proud of it: but more than this, since that time many  
of our parents, our children, our relations and friends  
our fellow-believers have been baptized: that Church,  
our place for our worship: could we have imagined the  
thought of abandoning it.

As to the two villages, we did not think to ask for  
them, though they have been from old the habitual  
residence of our people; because being every spring under  
water, we thought no white man could ever settle there  
in fact there is none as yet: the few spots which  
usually escape being inundated, we have them fenced

What we are unanimous in doing, besides the 20 square miles already  
opened up, are the 2000 valleys, the S. Joseph's from the junction  
of S. and M. forks, and the lower Delane from the junction  
of S. and M. forks. It would appear too much, and it would be so  
much, if all or most of it were fit for farming; but the far greater  
part of it is either rocky, or too deep, too cold, or swampy;  
besides we are not yet getting on to doing any farming; with  
the birth of God, we took labor too; we began talking  
the ground and we like it, though perhaps slowly we are  
continually progressing; but our untimely industry is not yet  
making up to the white man's. We think it harder to live on our  
old habits, to continue our ways; for now we have  
learned to have some hunting and fishing. We are now  
learning to have some friendly neighbors living about the  
same language, who, we doubt not, would much rather join  
us, than to go with people of a different language than  
ourselves. Of course, we would welcome them, and they would  
find it hard to go with the Ojibwas.  
We would think too to have some kind of title to  
what we are asking for. When the winter ago, deceived  
by false reports, we had foolishly, against the warnings  
of our teachers, gone to war against the white man,  
having been deceived by the white man's (Colonel Wright) men  
were keeping aloof; but the priest sent us word that the  
chief had promised to tell nobody, if they would come  
to him, and that there is no cheating in the Ojibwas;  
then we made peace with all our families near the Church;  
we made mutual promises and they were written on two  
papers; he kept one and showed us the other, and he





Plum & Whiteleg  
Wholes & Flourish  
Others of the hand made  
In the middle of the  
P. Joseph Royal & Williamsburg

11/17/20



Transcription of Cover of Exhibit 300T and 2351T

Citation: Chiefs of the Coeur d'Alene Nation to [Commissioner of Indian Affairs], November 18, 1872,  
Letters Received, Washington Superintendency, Microfilm, M 234, Roll 912, RG 75, National Archives.

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Illegible handwriting

Department of the Interior

Received Mch 7th, 1873

Dated \_\_\_\_\_, 187\_\_.

From Chiefs of the  
Coeur d'Alene Inds.

SUBJECT

Concerning the  
allotment of their  
lands etc.

(Illegible Name)

ACTION

File Mch 7, 1873.

Respectfully referred to the  
Acting Com'r of Ind.  
Aff.

[Round seal w/  
illegible writing  
across seal]



Acting Chief Clerk.  
Registered, Vol. 9, p. 188 (illegible) 159

U.S.A. & COEUR D'ALENE TRIBE v. STATE OF IDAHO  
Case No. CIV-94-0323-N-EJL

TRIAL EXHIBIT



\* 0300T \*

**Body of Letter**

(seal contains Department of the Interior, March 7, 1874)

We chiefs and people of the Coeur d'Alene beg of the Great Chief to listen to our words already we did write last winter requesting a part of our land to be allotted for our own exclusive use, we got no direct answer; only we hear vague reports, then something has been granted, but some few white men have already trespassed on it, though very little as yet: now allow us to speak once more.

In our first petition we made no mention of our church nor of the two valleys of S. Joseph, and Coeur d'Alene rivers, because in our ignorance we thought it a matter of course. When 30 winters past we had received the Word of God, we set to work to build him a house: it is very dear to us for many reasons: it is the work of our own hands, and we feel some way proud of it: but more than this, since that time many of our parents, our children, our relatives and friends our fellow believers have been buried near that Church and never for a moment could we have harboured (sic) the thought of abandoning it.

As to the two valleys, we did not think to ask for them, though they have been from old the habitual residence of most of us; because being every spring under water, we thought no white man could ever settle there in fact there is none as yet: the few spots which usually escape being inundated, we have them fenced in and cultivated. What we are unanimous in asking besides the 20 square miles already spoken of, are the two valleys, the S. Josephs, from the junction of S. and N. forks, and the Coeur d'Alene from the Mission inclusively. It would appear too much and it would be so if all or most of it were fit for farming but the far greatest part of it is either rocky or too dry, too cold or swampy; besides we are not as yet quite up to living on farming: with the work of God we took labor too, we began tilling the ground and we like it: though perhaps slowly we are continually progressing; but our unaided industry is not as yet up to the white man's. We think it hard to leave at once old habits to embrace new ones for a while yet we need have some hunting and fishing.

Moreover we have friendly neighbours (sic) using about the same language, who, we doubt not, would much rather join us, than to go with people of a different language the \_\_\_\_\_ camps of Spokanes we would welcome; and they would find hard to go with the Okanagons.

We would think too to have some kind title to what we are asking for. When 14 winters ago, deceived by false reports we had foolishly, against the warnings of our teacher, gone to war against the white man, having been rooted by the White head, Colonel Wright, we were keeping aloof: but the priest sent us word that the chief had promised to kill nobody if they would come to him and that there is no cheating in the soldier chiefs: then we met him with all our family near the Church: we made mutual promises and they were written on two papers: he kept one and handed us the other: on it, it is written that we should allow the people to pass freely through the land, to cut wood without ever molesting them and that the land should remain ours.

Since that we have always remembered our promise: We chiefs have always been \_\_\_\_\_ that our people should behave well; and when lately many white men came and settled on what we thought our own land they have never been disturbed we confidently appeal to the testimony of the settlers on Pine creek: let them say whether they found us good neighbors or not.

Therefore we hope you will grant us this bit of land, and we will feel thankful for it. We know you do help other Indians with tools, clothing and food: there is only one thing we might need: we want Brothers and Sisters to educate our children perhaps we won't yet be able to maintain them : but about that we intend to write at another time: for all the balance we choose rather to depend on our own hands.

We wish very much too that early in the spring Mr. Simms agent at Colville, or another whom you might appoint would come and visit the land, see what we ask for, and what we have done already. Uncertainty tends to paralyze our people when certain of a home they will work with new energy.

From the Coeur d'Alene Mission this 18th day of November 1872.

We undersigned are witnesses of  
the handmarks of the Chiefs.

---

J. Joset

Andrew      X      Seltis

can't read other names